

**Internal Revenue Service**

Department of the Treasury

Number: **INFO 2002-0170**

Washington, DC 20224

Release Date: 9/30/2002

Index Number: 1362.01-02

Person to Contact:

Refer Reply To:

CC:PSI:B1-GENIN-119622-02

Date:

Aug 7 2002

Dear [REDACTED]:

This responds to your letter, dated December 11, 2001, requesting recognition of [REDACTED] election to be an S corporation. Unfortunately, we are unable to recognize the taxpayer's election.

A small business corporation may make an S corporation election for any taxable year, at any time during the preceding taxable year, or at any time on or before the 15th day of the 3rd month of the taxable year for which it is to be effective. Internal Revenue Code, §1362(b)(1). An election made after the 15th day of the 3rd month will not become effective until the following taxable year. Section 1362(b)(3).

If an S election terminates, the corporation (and any successor corporation) cannot make another S election the 5th taxable year following the taxable year for which the termination was effective without permission from the Secretary. Section 1362(g). To obtain the Secretary's permission, a private letter ruling request must be submitted. The fact that more than 50 percent of the corporation's stock is owned by people who did not own stock in the corporation when it terminated tends to establish that the Secretary should grant. Income Tax Regulations § 1.1362-5(a).

Announcement 97-4 (copy enclosed) provides guidance on seeking relief for late S corporation elections. Generally, to request relief for a late S corporation election you must request a private letter ruling from the National Office. The procedures for requesting a private letter ruling are set out in Revenue Procedure 2002-1 (copy enclosed). In addition, Rev. Proc. 2002-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$6,000. However, taxpayers with gross income of less than \$1 million on their tax return for the most recent 12-month taxable year, qualify for a **reduced user fee** in the amount of \$500. If you qualify for the reduced fee, you must include a statement certifying your gross income for the last 12-month taxable year. Otherwise, the higher fee will apply.

If you decide to submit a formal request for a private letter ruling, please review Appendix B of Rev. Proc. 2002-1, and be certain to include all required procedural statements. Also include the proper user fee and any documents that substantiate your intent to be an S corporation from inception. Please refer your request to our office by

adding the following to the address:

Attn: CC:PA:T  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Direct to: CC:PSI:1  
Room 5002

We hope that this information is helpful to you. If you have additional questions,  
please contact at (202) 622-3050.

Sincerely,  
**/s/ Dianna K. Miosi**  
Dianna K. Miosi  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Announcement 97-4  
Rev. Proc. 2002-1

cc: